



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 87-2

DATE: 01/21/87

SUBJECT: Form 5402 - Realty Transfer Tax Return
and Affidavit of Gain and Value

Payment of Realty Transfer Taxes will no longer be documented by affixing a tax stamp to the deed at the time of recordation. The record of the payment of Realty Transfer Tax will be made by imprinting the deed and Form 5402 - Realty Transfer Tax Return and Affidavit of Gain and Value with a cash register impression. Form 5402 replaces the following forms: Affidavit of Value, Affidavit of Residence and Gain, and Affidavit of Non-Residence and Gain.

Effective March 1, 1987, all deeds presented for recording must have Form 5402 completed and attached. Deeds without Form 5402 will not be accepted for recording.

Section 5409 of 30 Del. C. and Section 9605 of 9 Del. C. require that information concerning the value of the property and residency of the seller be supplied at the time of recording. The above Sections state in pertinent part that every document presented to any Recorder of Deeds for recording shall set forth the true, full, and complete value of the property conveyed and shall state the reasons, if any, why such document is not subject to the Realty Transfer Tax. Additionally, no Recorder of Deeds shall accept for recording any deed without an Affidavit containing the following information about the seller.

"(1) An adequate description of the seller including name, residence, address, social security number and principal place of business as appropriate.

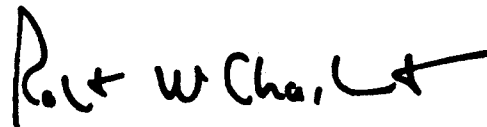
(2) Whether or not the seller is a nonresident individual, nonresident estate, nonresident trust or nonresident partner, as such terms are defined in Chapter 11 of Title 30, or, if the seller is a corporation, whether or not it is a foreign corporation.

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(3) The actual consideration received by the seller and whether or not he had a gain on the sale of the real estate to which title is purporting to be conveyed.

(4) Within such affidavit the seller shall also authorize the Division of Revenue or such other appropriate state agency as may be designated to obtain any appropriate or necessary federal income tax forms, including their attached schedules or other attachments, and any other related papers filed by such seller which relate solely to the said real estate to which title is purported to be conveyed by the deed or instruction being recorded."

Form 5402 - Realty Transfer Tax Return and Affidavit of Gain and Value is available at the Division of Revenue and the Recorder of Deeds offices in all three counties.



Robert W. Chastant
Director of Revenue

INSTRUCTIONS FORM 5402
REALTY TRANSFER TAX RETURN
AND
AFFIDAVIT OF GAIN AND VALUE

Every person who makes, executes, delivers, accepts, or presents for recording any document, except those exemptions defined or described in Section 5401 of Title 30, or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a Realty Transfer Tax at the rate of two percent (2%) of the value of the property represented by such document, which tax shall be payable at the time of making, execution, delivery, acceptance or presenting of such document for recording. Said tax is to be apportioned equally between the Grantor/Seller and Grantee/Buyer.

The following shall also be subject to the Realty Transfer Tax provisions:

1. Any writing purporting to transfer a title interest or possessory interest for a term of more than five (5) years in a condominium unit or any unit properties subject to the Unit Properties Act.
2. Any writing purporting to assign or transfer a leasehold interest or possessory interest in residential property under a lease for a term of more than five (5) years.
3. Any writing purporting to transfer a title interest in a mobile home which has been permanently affixed to realty by sewer, electric, and water connections.
4. Any writing purporting to transfer an intangible interest in a corporation, partnership, or trust where the beneficial owner(s) before the conveyance(s) owns less than 80% of the beneficial interest after the conveyance(s).

SPECIFIC INSTRUCTIONS

PART A - GRANTOR/SELLER

Line 1. Enter the Grantor(s)/Seller(s) Federal Employer Identification or Social Security Number, whichever is used. If the Grantor/Seller has applied for a Federal Employer Identification Number, please enter "Applied For" on Line 1 and notify the Division of Revenue when the number is obtained.

Line 2. Enter the name(s) of the Grantor(s)/Seller(s) [individual, partnership, or corporate name(s)].

Line 3. Enter the address of the Grantor/Seller to which correspondence is mailed.

Line 4. Check in the appropriate space whether a gain was or was not realized by the Grantor/Seller on the sale of the real estate conveyed.

Line 5. Check the appropriate box to indicate whether the Grantor/Seller is a Resident or Non-Resident of the State of Delaware, a Domestic Corporation, Foreign Corporation, S Corporation, Government Agency, Fiduciary, Partnership, or Non-Profit Corporation.

PART B - GRANTEE/BUYER

Line 1. Enter the Grantee(s)/Buyer(s) Federal Employer Identification or Social Security Number, whichever is used. If the Grantor/Seller has applied for a Federal Employer Identification Number, please enter "Applied For" on Line 1 and notify the Division of Revenue when the number is obtained.

Line 2. Enter the name(s) of the Grantee(s)/Buyer(s) [individual, partnership, or corporate name(s)].

Line 3. Enter the address of the Grantee/Buyer to which correspondence is mailed.

Line 4. Check the appropriate box to indicate whether the Grantor/Seller is a Resident or Non-Resident of the State of Delaware, a Domestic Corporation, Foreign Corporation, S Corporation, Government Agency, Fiduciary, Partnership, or Non-Profit Corporation.

PART C - PROPERTY LOCATION AND VALUE AND COMPUTATION OF TAX

Line 1. Enter the exact location of the real estate being conveyed.

Line 2. Enter the amount of consideration received. Consideration includes cash, checks, mortgages, liens, encumbrances, and any other good and valuable consideration. If consideration also includes the exchange of like kind property, include the full and complete market value of the real estate received in determining the consideration to be taxed at two percent (2%).

Line 3. Enter the highest assessed value (for local tax purposes) of the real estate being conveyed. If consideration includes the exchange of like kind property, include the full and complete market value of the real estate received in determining the consideration to be taxed at two percent (2%).

Line 4. Enter the greater, Line 2 or Line 3.

Line 5. Multiply Line 4 times 2%.

Line 6. Enter the tax due and payable with the recording of this document. If the full amount of the Realty Transfer Tax (2%) is not paid on the conveyance, use the space in Part D to explain the calculation.

Line 7. Check the appropriate box to indicate what type of property is being conveyed [Industrial/Commercial, Residential, Other, including property primarily used in farming].

PART D - EXEMPT CONVEYANCES

Explain the basis for the exemption from Realty Transfer Tax. Cite the Section of the exemption from Section 5401 of 30 Del. C. if known. If Section 5401(1)(j) is claimed as the basis for the exemption where property is transferred **from** a trustee, nominee, or straw party, attach a copy of the conveyance which shows the transfer **to** the trustee, nominee, or straw party to this return.

The Seller must sign his/her name and provide his/her title. The Return must be notarized and dated.